

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3724 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NARAYANSINH SHRIKRISHNAPALSINHBHADORIYA

Versus

STATE OF GUJARAT

Appearance:

MISS BHATT FOR MRS MADHUBEN SHARMA for Petitioner
MR JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE
Date of decision: 18/11/1999

ORAL JUDGEMENT

1. The present petition is preferred by a detenue detained by an order of the Police Commissioner, Ahmedabad city, dated 5th February 1999 in exercise of powers under sub-section [2] of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act']. The petitioner challenges the order of detention availing protection under Article 21 and 22 of the Constitution of

India and has, therefore, approached this Court with this petition under Article 226 of the Constitution of India.

2. The facts of the case are that, an order of detention came to be passed by the Commissioner of Police, Ahmedabad city on 5th of February 1999 on the ground that about four offences are registered against the petitioner involving him in offences punishable u/s 379, 114 of IPC and section 25[1][a], 1[b] and 1[c] of the Arms Act. The detaining authority recorded subjective satisfaction about the petitioner being a dangerous person as defined u/s 2[c] of the PASA Act. The statements of witnesses whose identity has not been disclosed in exercise of privilege u/s 9[2] of the PASA Act, have also been considered by the detaining authority and he, therefore, ultimately came to conclusion that there is no other remedy but to detain the petitioner under PASA to prevent him from pursuing his illegal and anti-social activities.

3. A representation was made on behalf of the petitioner to the Reviewing Authority and the Reviewing Authority considered the representation and rejected the same, confirming the order of detention.

4. The petition is preferred mainly on the ground that there is non-application of mind by the detaining authority particularly on question of considering the possibility of cancellation of bail in event petitioner is released on bail. It is contended that the petitioner was in fact in judicial custody and therefore, the authorities had a better option of opposing the grant of bail and second option of getting the bail canceled. This aspect has not been considered by the detaining authority while considering a less drastic remedy.

5. Miss Bhatt, learned Advocate appearing Mrs. Sharma, learned advocate for petitioner has restricted her arguments to this aspect and submitted that, in view of the decision taken by a Division Bench of this Court in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 on 15/9/1999, there is gross non-application of mind by the detaining authority. In that case, the detenues were on bail and question of getting the bail cancelled was not considered by the authority and the Court held that there is non-application of mind. The case of the present petitioner, according to Miss Bhatt, stands on a better footing since the detinue was in judicial custody when the detention order was passed and therefore, the authority ought to have considered the possibility of

resorting to the remedy of opposing the grant of bail or in event it is granted, of getting the bail cancelled, which has not been done by the detaining authority and therefore, this petition may be allowed.

6. Mr. Joshi, learned AGP appearing for the respondent authority has opposed this petition. According to him, decision of this Court in the case of Mamad Abbas Jasraya v/s Additional Chief Secretary, Government of Gujarat, Home Department & ors. reported in 1994[2] GLR 1209 will be squarely applicable to the facts of the present case. In that case also, the detainee was in custody and the Court came to the conclusion that considering the antecedents of the detainee, it was necessary to detain him even while he was in custody. In the instant case, according to Mr. Joshi, the petitioner is involved in number of criminal cases and therefore, the detention order cannot be said to be vitiated on ground of non-application of mind.

7. Having regard to the facts of the case, there is no dispute about the factual aspect that the petitioner is involved in four offences involving him in offences punishable u/s 379 and 114 of IPC and section 25[1] [a], [b] and [c] of the Arms Act. It is also not in dispute that when the detention order was passed, the petitioner was in custody and was granted remand by the Court to police. The detaining authority considered that when the petitioner is produced before the Court after the remand period is over, he may be released on bail by the Court and therefore, detention was necessary.

8. It is true that this Court, in the case of Mamad Abbas Jasraya [supra], observed as under :-

"Now taking this ratio of the judgement and applying to the facts of the present case, it is clear from the grounds of detention itself that the detaining authority was aware of the fact that the petitioners were in custody. Further the detaining authority was also aware of the fact that previously the petitioners had made frequent applications for bail in the lower court and further looking to the nature of the antecedent activity, namely, illegal importing of such huge quantity of contraband gold would clearly indicate that they would certainly make applications for bail to the higher Courts and after their release, they would engage in any such activities, and therefore, it was necessary to detain the petitioners in order to prevent

them from engaging in such activities."

But, at the same time, in a more recent judgement relied upon by Miss Bhatt in Letters Patent Appeal No.1056/99 in Special Civil Application No.8650/98, dated 15th September 1999, in the case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, this Court after considering the decision of a Division Bench of this case in the case of Zubedabibi Rasidkhan Pathan v/s State of Gujarat & ors., 36[2] GLR 1134, came to the conclusion that the detaining authority has to consider the question of cancellation of bail. In that case, the detinue was on bail and the authority did not consider the possibility of getting the bail canceled and the Court, therefore, held that there is non-application of mind by the detaining authority.

9. In the instant case, the petitioner was remanded to police custody when the detention order was passed. The detaining authority therefore could and should have considered the question of possibility of opposing the bail application, if it is preferred by the petitioner on his production before the Magisterial Court, and ought to have considered the possibility of non-grant of bail. The detaining authority ought to have considered a further possibility of getting the bail canceled in event the court did not accept the opposition to the grant of bail. If the detention order is seen, it is amply clear that these two aspects have not been considered by the detaining authority. This is, therefore, a case of clear non-application of mind on the part of the detaining authority on this important and vital aspect and therefore, the subjective satisfaction would stand vitiated. Only on this ground, the petition deserves to be allowed.

10. In view of the above discussion, the petition is allowed. The impugned detention order dated 5th February 1999 in respect of petitioner - Narayansinh Shrikrishnapalsinh Bhadoriya is set aside. The petitioner - detinue shall be released forthwith, if not required in any other case.

[A.L.DAVE, J.]

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